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## ATTACHMENT F: SAMPLE COOPERATIVE AGREEMENT AND FORM FNS-529

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### COOPERATIVE AGREEMENT

#### GENERAL TERMS AND CONDITIONS

#### U.S. DEPARTMENT OF AGRICULTURE FOOD AND NUTRITION SERVICE

#### WIC Electronic Benefits Transfer/Electronic Service Delivery

The Secretary of Agriculture, Food and Nutrition Service (FNS), is authorized by Public Law XXX to provide funding to the (NAME OF STATE) for the (NAME OF PROJECT) in cooperation with the FNS.

The (NAME OF STATE) (hereinafter "Recipient") has been designated by FNS to manage this Cooperative Agreement, and it is considered to be the Recipient herein.

The agreement period shall be from \_\_\_\_\_ to \_\_\_\_\_.

#### **Funding Goals**

FNS is working toward establishment of an Electronic Benefits Transfer (EBT) model or models with identifiable core functions along with other functions which fit EBT with the existing State WIC operations. Through new project initiatives, we are seeking to support implementation of EBT systems which will provide us more insights about the effect of greater volumes on cost effectiveness and system efficiency, and the development of a viable business case which takes into account the changing environments of the technology industries and the retailer community.

EBT funds are intended for one-time capital investments; in the context of EBT, these funds are primarily for system design and development costs. It is expected that once the pilot and statewide roll-out is completed, the ongoing system operations costs will be covered by the current nutrition services and administration (NSA) grant funds.

#### **FNS / Recipient Cooperation during the Project**

FNS will use the information resulting from this Cooperative Agreement to develop system models and to test the application of our developing functional requirements and policies. Therefore, we will be coordinating on an ongoing basis with the recipient to ensure that the progress of the EBT design and implementation includes:

- adequate system design documentation, so that sharing information with other State agencies and/or transferring design models is possible.
- a readiness to meet with, share progress, and discuss lessons learned with representatives of FNS and other State agencies at appropriate times.
- collection of cost data and transaction data in formats approved by FNS, to be used by FNS in evaluating system designs and cost effectiveness and to be shared by FNS with interested parties.
- project evaluation results, which will provide information to FNS on the adequacy and performance of system design, particularly in how it contributes to improved program service and integrity.

Receipt of EBT funds for the project described in the Cooperative Agreement proposal constitutes approval of an Advanced Planning Document to the extent that the proposal includes the necessary APD requirements (i.e., management plan, procurement plan, system design and implementation approach, timeline, and budget). However, other planning documents such as a cost allocation plan, feasibility study or Request for Proposals must follow the required document approval process for use of program funds, as advised by Regional Offices (as required by WIC regulations in 7 CFR 246.14). States must also follow the guidelines established in FNS Policy Memorandum #99-2, *Approval of WIC Electronic Benefits Transfer (EBT) Systems*, dated October 20, 1998.

The parties hereby mutually agree with each other as follows:

**A. THE RECIPIENT AGREES:**

1. To conduct the Cooperative Agreement project as described in Standard Form 424 (attach application) and accompanying attachments. The application document submitted by the recipient, which was evaluated, selected, and resulted in this award, should be attached to this agreement and supplies a summary of the intended overall plan and budget for the project. The Recipient agrees to modify its project development approach to meet the National EBT Functional Guidelines as outlined below:
  - *Ensure that the participant is able to purchase the full prescribed WIC food package, at their discretion within the valid period of issuance, and that the WIC food transaction affords the participant dignity and convenience.*
  - *Ensure that the participant is able to purchase only WIC authorized foods and foods are not improperly substituted.*
  - *Provide data on the type, brand and cost of each food item so that State agencies can better control food costs through informed food package decisions and maximization of rebates on infant formula and other foods.*
  - *Ensure that WIC clients are charged no more than contract price or shelf price for food as other customers.*
  - *Enable the food retailer to complete the WIC transaction efficiently and properly and assure that the cost of the EBT system for a WIC transaction is reasonable for both the State and the retailer.*
  - *Ensure that WIC food expenditure and rebate savings data, compiled by the State or outside entity, is accurate, provided promptly and in a timely manner, and allows the State agency to make better management decisions.*
2. To provide, at a minimum, two copies of a SF-269A (short form) Financial Status Report to the FNS Financial Management Regional Director at the end of each fiscal quarter and each fiscal year during the Cooperative Agreement period, and a final 269A when the Cooperative Agreement is completed. To maintain fiscal year integrity of grant funds received under this cooperative agreement, the SF-269A must reflect obligations posted by fiscal year. If there is a fiscal quarter in which obligations are posted against two fiscal years funds, two separate SF-269A's must be submitted. The SF-269A is due 30 days after the end of each fiscal quarter and 90 days after the end of each fiscal year of the reporting period. The final 269A is due no later than 90 days after \_\_\_\_\_, which is the close of the Cooperative Agreement period. The Regional Office will forward 1 copy of the annual 269A to FNS HQ, PAMB Funding Section at 3101 Park Center Drive, #540, Alexandria, Virginia 22302. Please send 2 copies of the SF-269A to the Financial Management Regional Director at the following address:

Director of Financial Management  
Region  
Food and Nutrition Service, USDA

3. To provide information on the Recipient's activities and needs to FNS upon request. At a minimum, the recipient will provide 2 copies of quarterly progress reports to the FNS Regional Program Director at the following address. The Regional Office will forward 1 copy to FNS Headquarters.

Supplemental Food Programs  
Regional Director  
Food and Nutrition Service, USDA

Progress reports are due 30 days after the close of each quarter. At a minimum, progress reports should include:

- a narrative description of project progress, tasks completed, and roadblocks or problems;
- reasons why goals and objectives were not met, if appropriate, particularly at predefined go/no-go decision points, and justification of decision to proceed;
- findings or activities which may require changes in schedule, accomplishments, or costs, particularly those changes which may impact the State's ability to utilize Cooperative Agreement funds within the specified time period; and,
- other pertinent information including, when appropriate, analysis and explanation of cost overruns.

By the close of the Cooperative Agreement period, a final progress report is due identifying the accomplishments of the project. The final progress report will be due 90 days after the expiration or termination of the Cooperative Agreement.

4. To submit to the FNS Regional Program Director an annual Cumulative Cost Report (CCR), due to FNS annually on January 31 until all costs are identified. Please submit CCRs in the attached format, including a final report once all costs have been identified. The report may be revised by mutual agreement as needs arise, but not more frequently than annually.
5. To provide any requests for revisions to the State agency's approved proposal in writing. The Recipient must receive prior FNS approval for any significant changes to this Cooperative Agreement. This includes any changes to the technical proposal as well as budget revisions as required by the provisions of 7 CFR 3016.30. It is necessary to request budget revisions only if the revisions reflect an increase or decrease of 10 percent of the total amount of the Cooperative Agreement. Budget revisions must be made to the SF-424A, and copies provided the FNS Regional office Director of Financial Management, and to FNS HQ Grants Management.
6. To provide support for WIC EBT through collaborative activities that promote consistency of information, cost effectiveness, standardization of design, and efficient adoption of technologies. To this end, the State agency agrees to adopt technical specifications or standards, as applicable, as determined by FNS. This would include "Financial Transaction Messages – Electronic Benefits Transfer (EBT) Guidelines for WIC, X9.93 as published by the American National Standards Institute (ANSI), Accredited Standards Committee (ASC) X9", the "WIC Smart Card Interoperability Specification, X9.108, and Universal Product Code (UPC) food categories and subcategories.

To conduct an evaluation of the pilot project, which utilizes, at a minimum, the components of the FNS National Model Evaluation tool in the format provided. The evaluation will be submitted to FNS Headquarters, through the FNS Regional Office, within 90 days of the end of the grant period.

7. To arrange a monthly conference call with the FNS Headquarters and Regional Offices in order to discuss pilot project progress. Conference calls can be scheduled by either party as needed. The frequency of such calls may be changed at a later date.
8. To notify the FNS Regional Office Program Director by \_\_\_\_\_ if the State believes funds will be obligated by \_\_\_\_\_, to allow FNS the opportunity to reallocate funds among other WIC State agencies.
9. Unless otherwise advised by FNS, the Recipient shall acknowledge the support of USDA/FNS, whenever publicizing the work under this Cooperative Agreement. To this end, the Recipient shall include in any publication resulting from work performed under this Cooperative Agreement, an acknowledgment in substantially the form set below:  
  
*"This project has been funded at least in part with Federal funds from the U.S. Department of Agriculture, Food and Nutrition Service, under Cooperative Agreement Number \_\_\_\_\_. The contents of this publication do not necessarily reflect the view or policies of the U.S. Department of Agriculture, nor does mention of trade names, commercial products, or organizations imply endorsement by the U.S. Government."*
10. To manage the program consistent with legislation, administrative rules, regulations, and procedures of the State, including coordination and approval of all accounting procedures and with applicable Federal administrative requirements contained in OMB Circulars A-102, A-87, and A-133 and the regulations implementing them, i.e. 7 CFR Part 3016. Also, adherence is required to the following: 7 CFR Part 3017, USDA Implementation of Governmentwide Debarment and Suspension (Non-procurement) and Governmentwide Requirements for Drug-Free Workplace Act; 7 CFR Part 3018, USDA Implementation of Governmentwide Restrictions on Lobbying.
11. That the Recipient and its Contractors are authorized to utilize subcontractors on this Cooperative Agreement. It is understood that the subcontractor(s) shall follow the appropriate cost principles as set forth by the Recipient, including Nonprocurement Debarment and Suspension Certification. FNS may review any such cooperative agreement, subgrants, subagreements, or subcontracts entered into with other entities.
12. To make all records pertaining to activities under the Cooperative Agreement available to FNS, the USDA Inspector General, or the U.S. Comptroller General, upon request.
13. Not to seek any financial recourse from USDA as a result of any liabilities the Recipient and designated State agency might incur for bodily injury or personal property damage resulting from negligent acts, errors, or omissions of the Recipient, its designated State agency, its officers, agents or employees, or if applicable its subrecipients or their officer, agents, or employees, in performing this agreement. Liabilities of the United States are governed by the Federal Tort Claims Act (FTCA), 28 U.S.C. 2671 et seq.

**B. THE DEPARTMENT OF AGRICULTURE FNS AGREES:**

The Regional Administrator of the Food and Nutrition Service (FNS) will coordinate the provision of Technical Assistance between Regional Office Supplemental Food Program and Financial Management staffs and the approval of the Cooperative Agreement and will:

1. Review and negotiate the description of the work and the budget, and to provide technical assistance to the State agency.
2. Review progress reports, and provide 1 copy to the HQ SFPD PAMB EBT Coordinator.
3. Review and negotiate modifications to the Cooperative Agreement, as necessary.

4. Provide financial reporting assistance and coordinate financial reporting requirements. The Regional Office agrees to forward 1 copy of the annual SF269A to FNS HQ, PAMB Funding Section at 3101 Park Center Drive, #540, Alexandria, Virginia 22302.
5. As needed, conduct on site financial and/or technical reviews and audits at any time during the terms of the agreement.
6. Communicate with the Recipient throughout the period of the Cooperative Agreement on strategies for resolving problems and obtaining technical and/or other assistance.
7. The Regional office agrees to submit one copy of the quarterly progress report referred to in A3, and one copy of the Cumulative Cost Report referred to in A4, to the SFPD EBT Coordinator.
8. Provide funding to the Recipient for direct and indirect costs as approved in the submitted budget. Indirect costs are allowable in accordance with an indirect cost rate agreement. Indirect costs are subject to approval by FNS and cannot cause the award amount to be exceeded.
9. FNS may provide technical assistance in the event the State must revert from an EBT system to a paper food instrument issuance system. With prior FNS written approval, the State may use a portion of these Cooperative Agreement funds to do a conversion back to paper food instrument issuance.

C. **THE RECIPIENT AND FOOD AND NUTRITION SERVICE MUTUALLY AGREE:**

1. The Recipient, the FNS Regional Administrator, and the FNS Headquarters Financial Management Director will complete and sign the FNS-529, the Grant/Cooperative Agreement, indicating acknowledgment and agreement to the conditions of the Cooperative Agreement.
2. FNS may recover unused funds at any point in the agreement period if any of the following conditions exist: (1) the Recipient chronically fails in their compliance with the terms of this agreement, (2) the progress of the project is unsatisfactory, as measured by the timeline and milestones outlined by the Recipient in their approved Cooperative Agreement proposal and/or revised Advance Planning Documents, or (3) there is serious doubt that the project will be successfully completed. In making this decision, FNS reserves the right to consider, among other issues, whether the delay or lack of progress is due to factors which are out of the control of the parties involved.
3. When the contracts for EBT services are signed, the Cooperative Agreement may need to be revised to include appropriate milestones, which may be the same milestones as identified in the State's procurement documents.
4. That the Recipient may seek and apply for funds from other sources, in support of the mission of the program, and shall ensure that externally funded projects reflect Federal regulations and policies.
5. That this Cooperative Agreement may be amended in writing at any time by mutual agreement between the parties. The Recipient must receive prior FNS approval for any significant changes to this Cooperative Agreement. If the Recipient wishes to submit a revised budget and work description, a justification shall be included.
6. Payments to the Recipient will be made for specific expenditures through a Letter of Credit process consistent with 31 CFR Part 205. In accordance with 7 CFR 3016.2, the recipient will draw down only the amounts needed to support payments to meet immediate cash disbursement needs.

7. That this Cooperative Agreement may be terminated by either of the parties hereto upon 60 calendar days notice in writing to the other party.
8. The Recipient is free to copyright any books, publications, or other copyright materials developed in the course of or under this Cooperative Agreement, but the U.S. Department of Agriculture shall reserve a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use the work for government purposes. Automated data processing software developed by the recipient shall be considered copyright materials for purposes of this provision.
9. The Recipient may establish a reasonable charge for products and services developed and/or provided in accordance with the program's mission, provided however, that the charge to public and nonpublic nonprofit organizations for products developed with Federal funds will not exceed the cost of reproduction and dissemination. Such money will be considered program income.
10. The Recipient may reproduce, distribute, and charge a reasonable price not to exceed the cost of reproduction and dissemination of training/educational materials produced under the Cooperative Agreement with permission and when proper credit is given. Such money will be considered program income.
11. The Recipient will use Cooperative Agreements and other related external sources of funding related to the program to augment the FNS Cooperative Agreement funds to expand services to the WIC Program consistent with the program's mission.
12. That any activity under the auspices of the program will be consistent with the mission of the program and will be executed through the designated State Agency.
13. As specified in A2 and A3, all final reports shall be submitted within 90 days after the end of the Cooperative Agreement period.

The signatures below indicate concurrence with the General Terms and Conditions of this Cooperative Agreement:

\_\_\_\_\_  
State Official

\_\_\_\_\_  
Date

\_\_\_\_\_  
USDA-Regional Administrator

\_\_\_\_\_  
Date

\_\_\_\_\_  
Director, Grants Management Division, FNS

Date \_\_\_\_\_

\_\_\_\_\_  
Director, Supplemental Food Programs Division  
FNS

\_\_\_\_\_  
Date